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K-TEC, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<b>K-TEC, Inc.</b> , a Utah corporation,  Plaintiff,  vs.  <b>Vita-Mix Corp.</b> , an Ohio corporation,  Defendant.	<b>JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT (PATENT LOCAL RULE 4-3)</b>  Civil Case No. 2:06-cv-00108  Judge Tena Campbell
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Pursuant to Patent Local Rule 4-3, Plaintiff K-TEC, Inc. ("K-TEC") and Defendant Vita-Mix Corporation (Vita-Mix) hereby submit the following Joint Claim Construction and Prehearing Statement pursuant to Local Patent Rule 4-3.

**A. UNDISPUTED CLAIM TERMS**

The parties agree that all claim terms or phrases not expressly identified herein do not require further construction or interpretation from the Court at this time. However, the parties

reserve the right to seek further claim construction from the Court should the need arise from subsequent proceedings or discovery.

## **B. DISPUTED CLAIM TERMS**

### **1. Bottom wall with a central axis**

*Plaintiff's Proposed Construction:* The bottom surface or floor of the blending jar, whether planar or non-planar, where an axis is positioned at the bottom surface and approximately equidistant from the four side walls.

*Citations:* '117 patent at col. 2, ln. 54-60; col. 6, ln. 58 – col. 7, ln. 7; col. 7, ln. 22-30; Figures 10-12; claims 1-36.

*Defendant's Proposed Construction:* Defendant asserts this term is not capable of construction from the specification, claims and drawings, none of which define a central axis of a bottom wall.

*Citations:* '117 patent at col. 6, ln. 58-60, 65-67; col. 7, ln. 22-24; Figure 11; claims 1-36.

### **2. Intersecting corners**

*Plaintiff's Proposed Construction:* Two or more of the general areas at which two walls of the blending jar meet with each other. An intersecting corner may comprise a relatively small radius or curvature.

*Citations:* '117 patent at col. 6, ln. 40-41, 54-67; col. 7, ln. 1-2, 7-9; Figures 10-11.

Office Action, May 2, 2005; Amendment and Response to Office Action, August 1, 2005.

*Webster's Encyclopedic Unabridged Dictionary of the English Language* at 999 (Random House, 1996) (***Intersect:*** "Geometry. to have one or more points in common").

*Webster's Encyclopedic Unabridged Dictionary of the English Language* at 1941 (Random House, 1996) (***Tangent:*** "Geometry.

touching at a single point, as a tangent in relation to a curve or surface”).

*Webster’s Encyclopedic Unabridged Dictionary of the English Language* at 452 (Random House, 1996) (**Corner**: “the place at which two converging lines or surfaces meet”).

**Defendant’s Proposed Construction:** The area where distinct adjoining walls meet.

**Citations:** ‘117 patent at col. 6, ln. 58-65; Figures 10-11.

### **3. Truncated wall**

**Plaintiff’s Proposed Construction:** A wall forming an inside surface of the blending jar, whether planar or non-planar, that truncates, in essence, the typical corner that would otherwise be formed by the intersection of two of the four side walls.

**Citations:** ‘117 patent at col. 6, ln. 52 – col. 7, ln. 12; Figures 10-11; claims 1-36.

*Webster’s Encyclopedic Unabridged Dictionary of the English Language* at 2030 (Random House, 1996) (**Truncate**: “to shorten by cutting off a part, to cut short”).

**Defendant’s Proposed Construction:** A distinct planar wall that cuts off and replaces the corner otherwise formed between two intersecting walls.

**Citations:** ‘117 patent at col. 6, ln. 56-65.

Definition: to replace (as an edge or corner of a crystal) by a plane and esp. by a plane that is equally inclined to the adjoining faces. *Webster’s Third New International Dictionary*; Definition: to replace (the edge of a crystal) with a plane face. *American Heritage Dictionary, 2nd College Ed.*; Definition: to construct from a geometric solid another solid consisting of those portions of the original solid that lie between two planes. *McGraw Hill Dictionary of Scientific and Technical Terms, 6th Ed.*; Definition: Square-ended base or apex of a structure, as if cut off. *Cambridge Dictionary of Science and Technology*

### **4. Planar truncated wall**

**Plaintiff’s Proposed Construction:** A truncated wall that is planar.

Citations: ‘117 patent at col. 6, ln. 52 – col. 7, ln. 12; Figures 10-11; claims 1-36.

*Webster’s Encyclopedic Unabridged Dictionary of the English Language* at 2030 (Random House, 1996) (**Truncate:** “to shorten by cutting off a part, to cut short”).

Defendant’s Proposed Construction: A distinct planar wall that cuts off and replaces the corner otherwise formed between two intersecting walls.

Citations: ‘117 patent at col. 6, ln. 56-65.

Definition: to replace (as an edge or corner of a crystal) by a plane and esp. by a plane that is equally inclined to the adjoining faces. *Webster’s Third New International Dictionary*; Definition: to replace (the edge of a crystal) with a plane face. *American Heritage Dictionary, 2nd College Ed.*; Definition: to construct from a geometric solid another solid consisting of those portions of the original solid that lie between two planes. *McGraw Hill Dictionary of Scientific and Technical Terms, 6th Ed.*; Definition: Square-ended base or apex of a structure, as if cut off. *Cambridge Dictionary of Science and Technology*

**5. A handle secured to the blending jar at the truncated fifth wall**

Plaintiff’s Proposed Construction: Plaintiff does not believe this term requires any further interpretation from the Court. The term plainly means “a handle secured to the blending jar at the truncated fifth wall.”

Citations: ‘117 patent at col. 6, ln. 40-54; Figure 10; claims 1, 19 and 36.

*Webster’s Encyclopedic Unabridged Dictionary of the English Language* at 2030 (Random House, 1996) (**At:** “(used to indicate a point or place occupied in space); in, on, or near”).

Defendant’s Proposed Construction: A handle secured to the blending jar and positioned opposite the truncated fifth wall.

Citations: ‘117 patent at col. 6, ln. 52-54.

**6. A handle secured to the blending jar at the fifth planar truncated wall**

Plaintiff's Proposed Construction: Plaintiff does not believe this term requires any further interpretation from the Court. The term plainly means "a handle secured to the blending jar at the fifth planar truncated wall."

Citations: '117 patent at col. 6, ln. 40-54; Figure 10; claims 1, 19, and 36.

*Webster's Encyclopedic Unabridged Dictionary of the English Language* at 2030 (Random House, 1996) (**At:** "(used to indicate a point or place occupied in space); in, on, or near").

Defendant's Proposed Construction: A handle secured to the blending jar and positioned opposite the fifth planar truncated wall.

Citations: '117 patent at col. 6, ln. 52-54.

**C. MARKMAN HEARING**

The parties anticipate needing approximately 3 hours to adequately present and argue the identified claim construction issues in a *Markman* hearing.

**D. WITNESSES**

The parties do not anticipate the need to call any witnesses or present any extrinsic affidavit testimony at the *Markman* hearing.

**E. OTHER ISSUES**

The parties do not anticipate the need for a prehearing conference prior to the *Markman* hearing. Claim construction briefing will be complete by March 21, 2007. The parties request that the Court set a *Markman* hearing as soon as available after that time.

Dated this 16<sup>th</sup> day of January, 2007.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 16, 2007, I electronically filed the foregoing **JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT (PATENT LOCAL RULE 4-3)** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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